

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN JACKSON and DEPARTMENT OF VETERANS AFFAIRS, HUMAN
RESOURCES MANAGEMENT DIVISION, North Little Rock, AR

*Docket No. 00-86; Submitted on the Record;
Issued October 30, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition in the performance of duty.

On February 4, 1999 appellant, then a 47-year-old timekeeper, filed an occupational disease claim alleging that a reassignment to a timekeeper position in Little Rock, Arkansas, would cause her severe hardship. In an accompanying statement, appellant stated that the employing establishment had planned to transfer her timekeeper's position in North Little Rock to its Little Rock division, which would cause her severe hardship, as she could no longer safely drive due to her progressive multiple sclerosis condition.¹

A memorandum to the file dated April 13, 1999 indicated that appellant's employing establishment never transferred her to the Little Rock division and allowed her to remain in her former position due to her objections.

By decision dated April 13, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she had not identified any compensable factors of employment.

In a letter dated April 25, 1999, appellant requested reconsideration of the April 13, 1999 decision and submitted new evidence. She stated that she was informed in November 1998 that one of the timekeeper positions would be eliminated and that such action would be conducted by the standard procedure of eliminating or transferring the employee with the most recent entry-on-duty (EOD) date. Appellant further stated that her EOD date was 18 years before that of the other timekeeper; however, she was notified that she would be transferred since she had completed a typing course and the other employee had no clerical experience or training. She

¹ Appellant submitted a letter from the employing establishment verifying a potential transfer to the Little Rock office and a letter from her physician confirming that she suffered from multiple sclerosis.

indicated that the timekeeper position was clerical and that the timekeeper employed in the position used a computer to perform 95 percent of the work. Appellant implied that because she was black, 47 years old and had trouble with balance due to her multiple sclerosis, she was being transferred and that the other timekeeper was allowed to remain in the position because she was white, younger and drove to work every day.

Regarding the claimed condition alleged to have resulted from employment factors, appellant stated:

“The worry of losing my job was presented to me.... I have a disease of the brain and central nervous system, multiple sclerosis.... The anxiety and worry over being transferred to a place of work, to which I had no way to get to, brought about symptoms that I had not experienced in 5 years. I experienced a great deal of physical discomfort. I was unable to perform my duties because of this discomfort. The decision to let me remain in North Little Rock was made after the fact. After I had consulted an attorney, about my unfair treatment at my workplace. After I [had] suffered. I had to use my money to pay a doctor bill. I used my sick leave, which I would still have, if I had [not] been put in a situation that caused an incapacity to perform my duties.

“I returned to work with the stress gone. The fact that I remain in North Little Rock, as a timekeeper, detailed to another service, should prove that my transfer did [not] have to be.”

The Office reviewed the merits of appellant’s claim on July 20, 1999 and denied modification of its prior decision. The Office found that appellant had failed to identify any compensable factors of employment attributed to her claimed condition.²

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.³ On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

² The Board notes that the Office’s misstatement about the location of the proposed transfer is *de minimus* error.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

Appellant alleged that she sustained an emotional condition due to unfair treatment at her workplace and the anxiety of being transferred to another location within the employing establishment to which she had no means of transportation. To the extent that disputes and incidents alleged as constituting discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁰

In this case, appellant has not submitted sufficient evidence to establish that the employing establishment discriminated against her in determining, as a preliminary matter, that her timekeeper position would be transferred to the Little Rock division.¹¹ The record establishes that the employing establishment, in its effort to realign certain positions within its agency, had determined that appellant would be the particular employee transferred, as she had more experience than the other timekeeper in her office. Appellant has substantiated this fact and has offered no evidence that she was chosen for transfer because of her age, ethnicity or medical condition. Moreover, appellant was never transferred from her timekeeper position in

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

North Little Rock. She was allowed to remain in her position after she voiced objections to the employing establishment. Appellant, therefore, has not provided any corroborating evidence that the employing establishment engaged in actions which constituted discrimination.

Regarding appellant's anxiety over being transferred to another location within the employing establishment, the Board has previously stated that an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position is not a compensable employment factor under the Act.

The notice appellant received regarding her future transfer relates to an administrative or personnel matter.¹² Unless there is evidence of error or abuse on the part of the employing establishment, administrative or personnel matters will not constitute compensable employment factors.¹³ There is no evidence of error or abuse in this administrative matter. Once appellant's concerns regarding the future transfer were presented to the employing establishment, the transfer was cancelled.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁴

¹² *James W. Griffin*, 45 ECAB 774 (1994).

¹³ *Id.*

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated July 20 and April 13, 1999 are affirmed.

Dated, Washington, DC
October 30, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member